

**General Virginia Stormwater Management Program (VSMP) Permit for Discharges
of Stormwater from Construction Activities (4 VAC 50-60-1100 et seq.) [Part XIV]
Regulatory Advisory Panel (RAP)
East Reading Room, Patrick Henry Building, Richmond
Friday, January 4, 2013, Meeting #7**

Regulatory Advisory Panel Members Present

Phil Abraham, Virginia Association of Commercial Real Estate
Barbara Brumbaugh, City of Chesapeake
Pat Calvert, James River Association (for Adrienne Kotula)
Jenny Johnson, Joyce Engineering
Roy T. Mills, VDOT
David Nunley, Caroline County
John Paine, Hampton Roads Planning District Commission
Mike Rolband, Wetland Associates
Peggy Sanner, Chesapeake Bay Foundation
Mike Toalson, Home Builders Association of Virginia
Cabell Vest, Aqualaw/VAMSA

Regulatory Advisory Panel Members Not Present

Doug Beisch, Williamsburg Environmental Group
William Bullard, Department of Defense/U.S. Navy
Corwin Chamberlain, Dominion Power
Ann-Neil Cosby, Sands Anderson
Normand Goulet, Northern Virginia Regional Commission
Jeff Kelble, Shenandoah Riverkeeper
David Nichols, Town of Bridgewater
Jonét Prévost-White, City of Richmond
Steve Vermillion, Association of General Contractors of Virginia, Inc.

Agency Staff Present

David A. Johnson, DCR
Virginia Snead, DCR
David C. Dowling, DCR
Michelle Vucci, DCR
Doug Fritz, DCR
Michael Fletcher, DCR
Matthew Gooch, OAG
Drew Hammond, DEQ
Joan Salvati, DCR

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John McCutcheon, DCR
Liz McKercher, DEQ
James Golden, DEQ
Melanie Davenport DEQ

Others Present

Lee Hill, Joyce Engineering
Chris Swanson, EEE

Welcome and Introductions

Ms. Snead called the meeting to order and welcomed attendees. She thanked members for their continued participation and noted this was the 7th meeting.

Regulatory Action Overview

Ms. Snead reviewed the Regulatory Action Overview and the charge to the RAP. A copy of this document as well as other materials provided for this meeting is available at this link: http://www.dcr.virginia.gov/laws_and_regulations/lr4c.shtml

Ms. Snead said that the intent was to take the regulations to the Virginia Soil and Water Conservation Board at their meeting on February 26, 2013. She noted that there would be time for additional comments and that RAP members were welcome to speak at the Board meeting.

Ms. Snead said that there were a number of issues and changes that she hoped would be discussed as the draft regulation (December 21, 2012 version) was reviewed line by line.

She reviewed the larger scale issues identified by the RAP to cover at this meeting. She said one of the larger issues was common plan of development or sale and this issue would be addressed through guidance and a FAQ sheet. She said other issues concerned generic Effluent Limit Guidelines (ELGs) and how to take care of concrete wash water. Ms. Snead said those issues would be discussed as the draft proposed regulation was reviewed.

Ms. Snead said that there also needed to be discussion regarding Stormwater Pollution Prevention Plan (SWPPP) availability as well as the definition of qualified personnel. She said there were also questions regarding rain gauges.

Ms. Snead asked if there were additional major issues RAP members wished to discuss.

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Mr. Mills said that he would like to commend staff for their work in getting the document out in time for the RAP to review it prior to the meeting.

Mr. Nunnally asked if there could be a discussion regarding the requirement for more frequent inspections.

Ms. Snead said that as the document was reviewed, there would be opportunities for discussion regarding any issue of concern.

Discussion of 12-21-12 Draft Permit Regulations

Ms. Vucci began a discussion of the December 2012 draft of the regulations. She referenced a matrix of comments provided by RAP members. Copies of both documents are available at the link provided above.

Ms. Vucci noted that throughout the document the term “state waters” had been changed to “surface waters.” She said this was done for consistency with other documents.

4 VAC50-60-1100. Definitions

Ms. Vucci noted that this definition section was specific to Part XIV of the regulation.

Ms. Vucci noted that, as discussed at the November 13 meeting, “qualified personnel” was already defined in the general section of the regulations. This was noted on the comment matrix. She noted there was not a specific definition of qualified personnel in section 1100 that is specific to the construction activity regulations.

Ms. Vucci said that “common plan of development” would be addressed through guidance. She said that this definition was also in the general definitions section of the regulations.

Ms. Snead clarified that the definition of common plan of development in Section 10 of the regulations had not changed from the previous general permit. She noted this was the definition used by EPA.

Ms. Brumbaugh said that she would recommend more clarification regarding “common plan of development.” She said there were many questions regarding when a plan is no longer a common plan of development. She noted at the November meeting, a discussion was had that if a development was initiated prior to the first regulatory actions regarding the construction permit that it was no longer a common plan of development. She said that there are many developments that have been in place for a long time but have lots that have never been built out. She said while she understood the accepted definition it needed further clarification.

Ms. Snead said that at the August meeting it was noted by a RAP member that because this is a federal permit discussing a federal definition, Virginia should further define this in guidance instead of through the regulations.

Ms. Brumbaugh said there was a lot of concern that there were sites that are not in compliance. She said the concern is when localities assume the program in July 2014 there will be thousands of non-compliant sites.

Mr. Johnson said that he agreed the definition was very generic. He said that guidance would be appropriate. He said that the concern was that if the definition was too prescriptive it could become problematic.

Ms. Brumbaugh said that the problem was that it was unknown. She said with EPA guidance and other reading there were still questions regarding how to determine whether a permit is required.

Mr. Fritz said that guidance allowed for more open discussion.

Ms. Brumbaugh asked what would happen with sites not in compliance on July 1, 2013.

Ms. Snead said that was a valid question that did not just apply to common plan of development but that it was a question that would be handled outside of the general permit and would be taken up by another committee.

Mr. Johnson said that the development of the guidance should be parallel to the adoption of the regulations.

Ms. Brumbaugh said that she still would like to see better definitions.

Mr. Johnson said that there is potential conflict where DCR interprets something different than local implementers. He said that he had instructed staff that guidance documents are critical.

Mr. Toalson noted that this was not a Virginia permit, but a permit that must be approved by the EPA. He said that normally Virginia issues are solved with Virginia solutions. He said now that it appeared that the state was dealing with Virginia issues but the solutions must receive the approval of the EPA. He said that while he generally would suggest otherwise, perhaps the best solution was to say as little as necessary. He said that there should be confidence in the process for open and public comment regarding the guidance. He said that he did have a concern that guidance could be changed without public input.

Ms. Snead said that DCR would not seek to change guidance without allowing for public comment.

Mr. Johnson noted that guidance was not enforceable. He noted that in many cases, that was preferred.

Mr. Rolband suggested that there could be parallels to wetlands regulations and to the Chesapeake Bay Preservation Act. He said that perhaps a date could be established and projects prior to a certain date would need to comply.

Mr. Tolson said that he agreed that something should be done regarding the transition period. He said there are thousands of communities with lots without permits. He said that, especially in the current economic situation, that owners should not be exposed to fines when they were not aware they were in violation.

Mr. Rolband suggested picking a date after which this would apply.

Ms. Snead said that date would need to have some rationale behind it.

Mr. Paine said that Ms. Tribo from the HRPDC had developed a decision tree and had asked for input.

Ms. Snead said that Ms. Tribo was asking for that with regard to developing new guidance.

Mr. Abraham said that it seemed odd to put a date certain in guidance.

Mr. Dowling said the logical approach would be to work through the guidance to establish a date that made sense. He said the public would have the opportunity to comment.

Ms. Snead said the concern was with changing the federal definition. She said that DCR would need to consult with legal counsel in that regard.

Mr. Johnson asked that RAP members submit ideas with regard to what should be in the guidance.

Ms. Sanner said that there was a divergence of opinion. She said that she hoped there would be an opportunity for further discussion.

Ms. Snead said that, assuming the regulations were ready to submit to the Board, the RAP would have the opportunity to review the information prior to the Board meeting.

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Mr. Toalson said that if it were accomplished through guidance that a lawsuit could be filed to declare construction activities invalid. He said that was a concern of relying on guidance.

Mr. Toalson asked why this could not just be an Erosion and Sediment Control Permit with the exceptions for concrete washout and paint washout basins. He said that there are small commercial construction activities with less than an acre. He said with the common plan of development this would be difficult for local governments to administer.

Mr. Fritz said that DCR was trying to implement a federal regulation and in many regards the state's hands were tied. He said that local permits that are issued under Virginia Erosion and Sediment Control have a different statutory approval. He said issuance of this permit is authorized under the federal Clean Water Act.

Ms. Brumbaugh noted that with the concern about not enough inspectors if the projects were not being inspected under the Erosion and Sediment Control program they would not likely get inspected under the general permit. She said the concern was that this had not been enforced but that localities would now be expected to provide enforcement.

Mr. Fritz said that he did not necessarily disagree, but the current goal was to deal with the actual permit.

Ms. Snead said that enforcement would need to be addressed through the guidance process.

Mr. Fritz said that another difference between Erosion and Sediment Control and the Construction General Permit was the federal effluent guidelines. Those are not implemented under Erosion and Sediment Control but are required under the General Permit.

Ms. Snead asked for a show of hands regarding consensus. There was not a general consensus.

Ms. Brumbaugh said she continued to have the same concerns already expressed.

Mr. Toalson said that he had a general understanding, but still had concerns.

Mr. Johnson said that staff recognized the concerns and would attempt to address them through guidance. He said that the concerns were valid and needed to be addressed.

Mr. Toalson said that he was recently at a conference with builders and consultants from the other Bay states. He said that none of the other states apply this requirement to individual lots.

Ms. Vucci continued the review of the definitions.

On line 50, Ms. Vucci noted that a definition of “Measurable storm event” was added.

Ms. Brumbaugh said that she had suggested using the DEQ definition for measurable storm event but that this language was different.

Mr. Hammond said that the difference was between a runoff event and a measurable storm event. He said there was a concern that 0.25 inches of rain does not generate runoff on every construction site. He said the intent was to get away from that ambiguity. He said that a quarter inch of rainfall is a trigger for the action to go out and do inspections. He said that by moving from the quarter inch rainfall to an actual discharge from a site it was important to understand that the inspection would be done once every seven days or when an actual discharge occurs from the site.

Mr. Fritz said the intent was to set the threshold so that everyone would know what that threshold is.

Ms. Brumbaugh noted that the time frame for the storm event was removed. She suggested two definitions because industrial permits have different requirements.

Ms. Sanner asked what definition was used in the remainder of the stormwater regulations.

Mr. Hammond said the definition was a rainfall event that resulted in an actual discharge from the site.

Ms. Johnson said that it needed to be worded so that the term was meaningful in the remainder of the regulations.

Ms. Snead said that the discussion should be about the definition but that the term may change.

Ms. Brumbaugh said that she would not recommend having two different definitions for the same term.

Mr. Nunnally said that since the previous meeting there had been a couple of rain events in this range. He said that in his observations, a quarter of an inch of rain in an hour is not enough to trigger a full site inspection. He said that the full site inspection has a significant cost.

Ms. Snead asked if specifically for the term “measurable storm event” if Mr. Nunnally had a suggested language change.

Mr. Nunnally said that he wasn’t sure that it could be broken down to be addressed specifically. He said that ultimately the inspection requirements increased costs. He said that he was concerned with a backlash for a requirement that cost money without results. He said that in these cases a full site inspection was not needed.

Ms. Snead said that for the purpose of what the contractor needs to do for a measurable storm event the focus should be on the definition. She said that the applicability could be addressed later.

Mr. Fritz said that he believed this encouraged more cooperation. He said that not only is there an inspection but repairs must be done.

Mr. Nunnally said that there would not be projects at this level. He said if there were site problems and an inspection was required, the costs with no benefit could create a backlash.

Mr. Johnson noted that the term “measurable storm event” was used and later changed to rain. He said that stormwater had typically included snow. He asked if snow triggered the inspection.

It was noted that the more industrial rain gauges were equipped with anti-freeze to measure the actual liquid amount.

Ms. Snead said there were provisions for ground that was frozen or snow covered.

Mr. Johnson said that he wanted to make it clear that a storm event referenced rain, not snow. He said that with the changing of the term “storm” to “rain” he wanted to make sure it was consistent.

Ms. Snead asked if there were other comments. She said staff would develop another term that would work with the DEQ definitions.

Ms Vucci said that staff would change the term measurable storm event to get away from the DEQ definition and will make additional changes to address the concerns.

Ms. Snead took a test for consensus. There was general consensus with concerns as noted during the discussion.

4VAC50-60-1110. Purpose.

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There were no comments regarding this section.

4VAC50-60-1120. Effective date of the permit.

Ms. Vucci said there were no changes in this section.

4VAC50-60-1130. Authorization to discharge.

Ms. Vucci said a number of comments were received regarding this section. She said she would note the comments as she reviewed the section.

Mr. Fritz noted that on lines 72-74 the term “emergency related” had been inserted. He said that the term needed to be moved to after the word “including” instead of before.

Ms. Sanner asked if there was a definition for emergency related.

Mr. Mills said that it was included in the law and also on line 106. The operator is to respond to any emergency related to public safety and danger to life.

Mr. Fritz noted that the definition was included on line 459.

On line 77, Mr. Mills asked about the acceptance of the registration by the Board. He asked if the Board accepted or if the Department accepted.

Mr. Mills noted that on line 92 and 93 the erosion and sediment control program has annual standards and specifications approved by the Board. He noted however that the language on line 99 did not include the annual standards and specifications. He said he was concerned the wording was not the same.

Ms. Snead said that it was not the intent to mean something different and that staff would review and clarify.

Mr. McCutcheon noted that line 93 referenced the annual specifications reviewed by the department. Mr. McCutcheon said that staff would verify to make sure the language matched the law.

Ms. Vucci continued on line 109.

Ms. Vucci continued on line 175. She said staff could be verifying that the words matched in appropriate places.

On line 181 Ms. Sanner suggested the phrase “and does not serve” rather than “or does not serve.”

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Mr. Fritz said there was a necessary distinction.

Mr. Rolband suggested that at this point the committee review the document according to issue and not line.

Mr. Johnson said that as the review moved forward, consensus would be assumed unless someone objected.

4VAC50-60-1140. Delegation of authorities to state and local programs.

Mr. Mills asked for clarification regarding the authority to collect fees.

Mr. Fritz said that this was the regulation that deals with the VSMP authority. He said this is tied to the general permit.

4VAC50-60-1150. State permit application (registration statement).

Ms. Vucci noted that there had not been consensus regarding this section at the November meeting.

Mr. Toalson asked about the availability of the online permitting process.

Ms. Snead said the development of the online program was on schedule.

Ms. Sanner suggested that on line 273 the word “retain” be used instead of “reserve.”

Mr. Mills asked about updating the SWPPP on line 253. He asked if the SWPPP would need to be updated for Erosion and Sediment proposals. He asked staff to elaborate on what would need to be updated in the SWPPP. He asked if this requirement was needed in this section since it was addressed elsewhere.

Mr. Fritz said that he did not see a conflict. He said that in order to continue coverage the plan must be updated to comply with the permit. He said that the permit outlines what the updates are.

Mr. Mills said that with the re-permitting process, VDOT would have to submit registration statements. He asked if that would be covered in ePermitting. He said that otherwise VDOT would have to file 400-500 statements.

Ms. Brumbaugh asked if there would still have to be both paper registration and ePermitting.

Ms. Snead said that the application would have to be printed and signed. She noted that was an EPA requirement and that Virginia could not waive that requirement.

Mr. Fritz said that the permit has the requirements for updating the SWPPP.

4VAC50-60-1160. Termination of state permit coverage.

Mr. Mills asked if the reference on line 346 was for an electronic notice or hard copy.

Mr. Fritz said that the federal requirement was to have a document with an original signature.

Ms. Brumbaugh said on line 399 (signing the certification) that she had concern with the language regarding the residential lots.

Mr. Fritz said that the intention was not that each owner had to certify. He said that the reference should be to Section 112 instead of Section 58 on line 401.

Ms. Snead said that if the requirement was in the regulations, EPA wanted to see it in the permit.

Ms. Brumbaugh suggested adding language.

Mr. Johnson asked if something was already in the regulation why it was being added to the permit.

Mr. Rolband said that this requirement was already being done.

Mr. Rolband said that every new lot owner would have to check on certifications. He said localities would be doing certifications hundreds of times.

On line 379 a member referenced reporting for construction activity treated offsite. The member said the section needed some wordsmithing. There needed to be an accounting for construction acres.

There was general consensus on this section.

At this time the committee recessed for lunch.

Following lunch, Ms. Vucci continued the review.

4VAC50-60-1170. General permit.

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Ms. Vucci noted that there was a re-write to the section on impaired waters beginning on line 519.

Mr. Toalson asked if there was progress regarding getting the impaired waters information online.

Ms. McKercher (DEQ) said that the TMDLs were now on the map and that the general public could determine whether they were in a TMDL watershed. She said that ePermitting would take some time, but that it was fully expected that impaired segments with observed sources and exceptional waters would be mapped.

Mr. Rolband said he appreciated the addition of public safety on line 462.

A member said that line 519 (limitations on coverage) was still confusing regarding what was actually covered.

Ms. Snead said that staff is working to rewrite that section so that it would make more sense.

Mr. Hammond reviewed a chart outlining impaired segments. He said the language doesn't say anything about sediment, nitrogen and phosphorous. The polygons in the impaired segments would translate to ePermitting - the only observed sources are basically sediment except for the Bay impairments which are both nutrients and sediment.

Mr. Hammond said that as of the date of the meeting, the only observed sources identified were nitrogen and phosphorus.

Mr. Toalson said that he hoped the mapping would show latitude and longitude.

Mr. Hammond said that staff was making sure all the appropriate layers were implemented.

Mr. Toalson asked if there major large watersheds other than the Bay or that have a TMDL applied to them.

A member asked why the acreage restrictions were chosen.

Mr. Paine asked about the intermittent/blue line sites on the map and asked if there would be a discharge to something that is not included in the GIS.

On line 449 (new construction activities), Mr. Mills noted that section A was also talking about previously constructed. He said sections A and B overlap.

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Mr. Mills suggested on line 536 (inspections) that the language say “no later than 48 hours.”

A member asked on line 569 (nutrient application) if the language should say “in accordance with an approved Nutrient Management Plan.”

Mr. Nunnally said that he did not like the provision for the re-inspections. He said that doing more inspections doesn’t result in any benefit.

Mr. Nunnally said that when the requirement was seven days plus the 48 hour requirement that it became confusing. He said the problem was the cost.

Mr. Fritz said that by the increase in inspection the operator gains the ability for coverage under the general permit.

Mr. Nunnally said that the hope was to provide better protection and better results. He said that this inspection didn’t do that but that it was cost with no benefit.

Ms. Snead said that would be a cost savings vs. the alternative of an individual permit.

Mr. Fritz said there would be times when there could be 2-3 rain events during the one week process.

Mr. Rolband said that to improve water quality, things must be done differently. He said that if the focus was going to be in more frequent inspections, on lines 536 and 581 he would make a suggested change. He suggested that the standard protocol be every seven days.

Mr. Rolband said that what was missing was the option to do this on a regular basis.

Mr. Nunnally said that he liked the option of allowing people to manage the program in the best way and decide what is appropriate for them.

Mr. Mills said that he was not comfortable with the 48 hour requirement. He said that VDOT could work with 7 days.

There was discussion that wording be included to state that the inspection would occur “within four working days.”

Mr. Fritz said that by agreeing to the general permit the operator will sign a certification that it will be followed. He said that the other option would be to apply for the individual permit.

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Mr. Mills said that he was not sure that there would be a lot more protection with 48 hours.

Mr. Johnson said that staff would distribute the information from Mr. Rolband and will solicit comments from RAP members.

Mr. Toalson said there should be some forbearance if there was no rain. For example if there were drought or winter conditions.

Mr. Fritz said that drought was more of a long term reduction of expected rainfall.

Mr. Calvert noted that on line 521 (limitations on coverage) there appeared to be a word missing. The discharge could not be directly into the source.

Mr. Hammond said that observed sources could be activities or pollutants. He said some times the pollutants or the activities will be listed. He said it could say stormwater from construction activities.

Ms. Snead called for a consensus test.

There was no consensus unless the “or four working days” option was added for the inspection.

Section II: Stormwater Pollution Prevention Plan

Ms. Vucci began the review of Section II, beginning on line 675.

Ms. Vucci said that she did not believe there was anything major. However, she noted that Mr. Abraham was not present. She said on page 19 regarding the pollution prevention awareness training issue, language was added that addressed prior concerns.

Ms. Vucci noted that there was a lot of stricken language. She said the reason was that most of this had been moved to other sections within the regulation.

Mr. Mills asked if the RAP would review the entire section at one time.

Ms Vucci suggested that the RAP review from line 675 on page 15 to line 882 at the bottom of page 19.

A. Stormwater Pollution Prevention Plan.

Mr. Mills noted that lines 701-702 talked about “limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed.” He said that was talking about disturbed and undisturbed areas in the same sentences. He suggested edits or something that would delineate between land disturbance and areas that would not be disturbed.

It was suggested that a comma after “land disturbance” would clarify the meaning.

Mr. Mills said on line 720, the language talked about updating the SWPPP. He said that paragraph seemed to be there with no number or designation.

Ms. Vucci said that staff would review the formatting.

Mr. Mills said on line 748 the language read “Controls the volume and velocity within the site to minimize soil erosion.” He said that after velocity the words “of stormwater runoff” should be added.

On line 747 the phrase should read “annual standards and specifications approved by the department that adequately:”

On lines 754-756, Mr. Mills said he noted the language addressing the frequency, intensity and duration of precipitation. He asked what storm event that was to address, whether the language addressed a 100-year event or a 10-year event. He said there would be a lot of differences and that he thought there should be some clarification as to what the frequency, intensity, and duration of precipitation this was referring to. Or, what storm event. He said that perhaps that was in guidance but that this language was confusing.

Ms. Snead noted this was coming from the EPA language.

Mr. Fritz said that the intent was to reduce the impact.

Mr. Mills said that on line 760 the language read “unless infeasible” but on line 761 the language said “where feasible.” He said that while that may have come from federal language the terms should be consistent.

Ms. Snead said those were two different references. One was speaking to providing and maintaining substantial buffers and that should be done unless unfeasible, where subsection g was referring to soil compaction.

Mr. Mills said on line 767 that the language was confusing. He said that he thought the intent was to address the discharge not from the wet storage stage but the dry storage stage and that this went back to the surface discharge.

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Ms. Snead said that this related to a comment received several meetings prior.

Mr. Mills said that the language was confusing but that he was uncertain if there was a better way to write this section.

Ms. Snead said that staff would review the wording.

Mr. Mills said on line 770 the paragraph needed a letter designation.

Mr. Mills said on line 804, the language said “eliminate the discharge” where elsewhere the language said prevent. He said that the intent was to put in measure to prevent, not eliminate. He said that he was unsure how this was worded in the federal regulations.

Ms. Snead said the language was from the federal regulations.

On line 820, Mr. Mills asked about the language regarding concrete wash water into a “leak-proof container or leak-proof settling basin that is designed so that no overflows can occur due to inadequate sizing or precipitation.” He asked how that would be ensured. He said perhaps that could be clarified in guidance.

Ms. Snead said that she did not believe the intent was to set specific design standards in the regulations.

Mr. Mills said that perhaps the language could say that “no overflows were expected to occur.” He said without a specific design standard there could not be guarantee that this would not overflow.

Mr. Fritz said that the problem was this language was a prohibition of discharge. He said that there would be a problem if the language said that a discharge was expected because EPA would say that the discharge was prohibited. He said that he had seen some creative options. He said that he thought the guidance could show examples.

Mr. Mills said that on line 834 for the language to “address any other discharges from pollutant generating activity not addressed above,” he would suggest saying “potential activities.”

Mr. Mills said that for Section 6 starting on line 836, he felt that having the personnel be trained or aware of all disposal practices, if the SWPPP had to be updated to include that for ongoing projects, there would be a cost associated with that. He said the contractors would be concerned about having to go back and retrain employees regarding where to dispose of the paint or fuel or whatever. He said they should know this but if the contractor had to revise the SWPPP to make sure, that could be cost prohibitive.

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Ms. Snead said that the certification part was removed.

Mr. Fritz said that if an operator was already implementing a plan they should know where to deal with paint, motor oil, etc. He said that an operator going back to the SWPPP would state that this was already done.

Mr. Mills said that it was a matter of revising 400-500 SWPPPs. He said that on many occasions modifying a SWPPP would mean a small change in the document. He said that VDOT did not have anything in their standards about contractors or employees getting training on where to dispose of pollutants. He said that was an individual project issue. He said VDOT would have to modify every SWPPP for every project or write a specification that would have to be implemented on every project that isn't there now. He said that his guess was that contractors have not been told how to dispose of these pollutants, at least not formally. He said that contractors would say that if they had to bring employee in to tell them how to dispose of paint and oil, etc., that would be a cost to the project.

Mr. Fritz said that the language did not address training. He said pollution prevention awareness could be as simple as a sign. Mr. Fritz said that DCR had done what they could to address the federal ELGs and still get this information out.

Mr. Mills said that his point was that any time an update to the SWPPP was required there would be a cost involved. He said that for the other things which the SWPPP needed there were specifications already in place to address those. He said this requirement was not, as far as he knew, in any specifications so this would be a completely new requirement.

Mr. Toalson said that given the significant changes with the ELGs and the General Permit, was 30 days enough time to update the SWPPP? He asked if 60 days would make more sense given the number of changes.

Ms. Snead said there were not that many new requirements.

Mr. Fritz said that DCR was issuing this permit one year and 30 days prior to the effective date.

Mr. Toalson said that DCR would receive them all the last day.

Mr. Fritz said that DCR would not receive any of the permits. It was something that the contractor would be doing. He said one of the nice things about being proactive this time is that if the contractor knows how many SWPPPs have to be updated there was time.

Mr. Johnson said that this was not like the MS4 permit which is immediate. He said that there would over a year to address this. He said that it could not be effective on July 1, 2014. He said that if this was to be applied in 2013, he would agree that this needed more time, but he said this regulation would be sitting for some time before being active.

Mr. Toalson said that included the people who do not have permits.

Mr. Johnson said that he did not believe another 30 days would help in this situation.

Mr. Mills noted on line 845(applicable state and local programs) regarding certain parts that may be filled in by reference to other plans. He asked if that should include the requirements of the SWPPP.

Ms. Vucci noted that this replaced the language at line 872.

Mr. Mills said that on line 864 the language said “wet weather events” but on line 570 the language said “rainfall event.”

Staff agreed to look at the language for consistency.

Mr. Mills said on line 868 with regard to delegation of authority. He said that implied more of a duly authorized representative. He said that “duly authorized representative” as opposed to “delegation of authority” might be a better heading for that section.

On line 747 a member noted that the reference to the department may need to say the Board.

Ms. Snead said that would be addressed.

Ms. Brumbaugh said that on line 708 the wording was vague.

Ms. Vucci said that the language in 708-709 was actually lifted from line 1199 which was stricken. This language was in the old permit.

On line 836 (pollution prevention awareness), Ms. Brumbaugh said that it appeared to have new language for awareness training. She said it was not clear. Ms. Vucci noted that this language was changed in response to comments from members of the RAP.

Ms. Brumbaugh asked if this was asking for specific qualifications.

Mr. Fritz said that this was not looking for specific qualifications but that the person applying was listing their qualifications.

There were no additional comments regarding Section A.

Section B – SWPPP Modification, Updates and Records

Ms. Snead asked the RAP for comments from line 938 to line 997.

Mr. Mills asked on line 953 why the section identifying the contractor or subcontractor was needed if the operator was held responsible for the project. He said that the operator was generally responsible for the project. He said that DCR could not enforce the work of the contractor but would enforce the operator. He asked why this was necessary.

Ms. Vucci noted that this was language moved from line 995.

Ms. Sanner asked what the objection would be to providing that information.

Mr. Mills said the contractors and subcontractors may change several times. He said that every time the subcontractor was changed then the SWPPP would need to be updated.

Mr. Johnson noted this was current language.

Mr. Mills said that it was identifying the person responsible for the erosion and sediment control implementation plan but not identifying the contractor. He said that he would be okay with the language if “contractor or subcontractor” was removed and “person or persons responsible for the control measures” was included. He said those persons are identified in the SWPPP as the person responsible for overseeing the operation but not the contractor or the subcontractor. He said that the contractor or subcontractor answered to VDOT, not to the public.

Ms. Snead asked if that would change more often than the contracts.

Mr. Johnson asked for comments from the private sector representatives.

Mr. Toalson said if the contractors and subcontractors were not responsible under the provision of the permit why it mattered.

Ms. Snead said they would be implementing the terms of the permit.

Mr. Rolband said that in many cases EPA was reaching down to get the information regarding who was responsible.

Mr. Toalson said in cases like that, the operator could just provide the list.

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Mr. Rolband said that in cases of enforcement the EPA would go after the operator as well as the contractors.

Mr. Johnson said if the law was violated, the first question of a query was does that have to be listed in the permit? He said the permit holder was the one that was addressed. He said if something was illegally placed in a wetland that might not be the operator or the contractor.

Ms. Sanner said that would come out in the litigation.

Mr. Johnson said that the point he was trying to make is that there is a road to enforcement without going through the issue of SWPPP maintenance. He said he wanted to be able to collect from the real polluter but not at the expense of so much burden.

Ms. Sanner said that as a result of litigation that what will happen is that it will magnify the difficulty of getting at the person responsible and who will be held accountable unless that information is included. She said she saw this as an advantage to the permittee.

Mr. Johnson said that what concerned him was the extent of the burden.

Mr. Fritz said that there may be confusion regarding the terms contractor and subcontractor. He said the language was not calling for information regarding every contractor and subcontractor, but who implemented the SWPPP. Who is doing the Erosion and Sediment control? Who is doing the maintenance?

Mr. Mills said that he could have someone doing temporary stabilization, someone installing a silt fence, someone else actually maintaining the silt fence. He said it could be a list of 20-30 contractors on a large job. He said to him it did not do any good to have that requirement because ultimately the permittee was the one held responsible.

Mr. Johnson asked in levels of contracting, if there was the owner of the permit, then there was a contractor, and then the subcontractor. He said that the subcontractor was the most variable. Mr. Johnson asked if the contractor was restricted from changing the subcontractor. He said that would be the issue.

Mr. Mills said that VDOT contractors were the prime contractor and that the contractor hired his own subcontractors. He said that VDOT would be aware of the changes. The area construction engineer would need to be notified, but that VDOT had no written contract with the subcontractors.

Mr. Johnson said that what made sense was that the listing of contractors which was stable, but not subcontractors, as they changed periodically. He said his concern was

with the burden on the operator. He said that he did not know how this would be enforced.

Ms. Snead said that on line 953 the “subcontractor” could be removed.

Mr. Fritz said that in the federal permit in the SWPPP all other operators must be included. He said that in the federal permit, that operator meant the day to day operator of who was on site and who was in charge that particular day. He said one day it could be the grading contractor and the next day it could be the painting operator. So the person in charge may change. He said by putting them in the list, they would be listed to show who would be doing the work. He said that the federal permit also said that the subcontractor was not considered the operator.

Mr. Johnson said that this language would be cleaned up. He said that the intent was to be able to enforce, but staff would look at substitute language.

Mr. Mills asked if the requirement for the prime contractor to be in the SWPPP should be moved under the SWPPP requirements as opposed to under the modifications and updates.

Mr. Johnson said that it should be in both places.

Mr. Mills noted that lines 957-960 needed a number designation.

Ms. Vucci noted that staff would review the formatting.

Mr. Toalson asked what the point was about having the record of the date of major grading activities and if there needed to be that accurate a recording of dates.

Mr. Toalson said that he was referring to construction sites where someone was on site every day.

Mr. Fritz said that the reason the grading was there is because if grading was done and the inspector came back later and the site was still not stabilized, there would be no record of when grading was done and no way to confirm compliance.

Mr. Toalson said the operator would likely say “it was graded yesterday.”

Mr. Fritz said that “we cannot put morality into these permits.”

Mr. Toalson said that the permits should also not include traps.

Mr. Fritz said that this was a mechanism to determine compliance. If grading was going to be done, in this permit and in the ELGs the operator has seven days to ensure stabilization.

Mr. Nunley said that if inspections were done every fourteen days, every seven days or maybe every four days, it seems that the inspection report would determine if the site was compliant.

Mr. Johnson said that was the way to check to make sure the site had been stabilized.

Mr. Johnson said in that case the inspector would inform the operator they would be back in seven days. He said that could be a head's up to the operator that something would be done.

Mr. Mills said that in visits with EPA one of the major things they look for is documentation of what has been done.

C. Public Notification

Ms. Snead moved to lines 998-1009.

On line 999 (public notification), Mr. Calvert asked if it was required that the notification is "accessible."

Ms. Snead said the intent was to specifically have the notice near the main entrance.

Ms. Sanner said that the words "available in a manner to the public" could be added.

Mr. Johnson asked how building permits were generally posted.

Mr. Toalson said they were posted on site in a variety of manners. He said some contractors will include the information in a mailbox.

Ms. Brumbaugh said that she would recommend that DCR make all permit coverage available.

Mr. Fritz said the information was already live and available on the DCR website.

D. SWPPP Availability

The discussion moved to lines 1010-1027 (SWPPP availability).

Ms. Sanner expressed a concern about the option in subpart three (line 1021) to make a hard copy of the SWPPP available. She said that she was concerned this could be used as a way of denying availability to the public.

Mr. Johnson asked Mr. Gooch for comment. He asked if the SWPPP was part of the permit.

Mr. Gooch said the SWPPP was not part of the permit. He said that the Federal court said that the Clean Water Act does not require public access to the SWPPPs. This was the ruling in the 7th circuit.

Ms. Sanner said she believed the terms of the SWPPP were incorporated in the permit, were described in the permit, and should be made available to the public. She said that giving the operator the ability to make the SWPPP available only on one day per month was in effect giving the ability to deny review of the permit.

Mr. Johnson asked DEQ representatives if DEQ had their SWPPP plans available for public review. He asked if he was correct that in the industrial sector where things such as toxins and other pollutants were possible that there was no opportunity for public review.

DEQ responded that did not have a provision inside the industrial general permit that requires making the plans available. They noted that the SWPPP was not required as a part of the permit application. However, DEQ noted that if the SWPPP was submitted with the application it became part of the public record and would be provided if a Freedom of Information Act request was made.

Mr. Johnson asked why there was an interest in the stormwater SWPPP, but not for industrial.

Mr. Toalson said those provisions in section D3 were provisions that in 2009 the private sector objected to. He said that he did not see the reason for public notification. He said that he did not think it appropriate to have unqualified persons on private property conducting themselves as inspectors. He said contractors did not have to give public notification with regard to building permits.

Ms. Snead said that the permits needed to be posted.

Mr. Toalson said yes, but not before construction begins.

Mr. Rolband said that was required in Fairfax County. But not statewide.

Mr. Fritz said that this was a state permit.

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Mr. Johnson said that in some cases this was portrayed as critical for public reviews but not in all cases. He said that research showed that the federal government did not require this, nor did other states.

Mr. Johnson said the issue was interesting but not thought about widely by the EPA that this would be required. Mr. Johnson said that the availability of the SWPPP should be there for the local governments to review, those who have purview. He said the locality and DCR had that authority.

Ms. Snead clarified that Mr. Johnson was suggesting removing lines 1021-1027.

Mr. Johnson said yes, unless there was some other exemption that was missing.

Mr. Mills noted that the information on ePermitting would be accessible to the public. He asked with that information available why that would need to be available at the site.

Mr. Johnson said that he had been a big proponent of making the information available online, but said that there was still resistance by those who would prefer hard copy.

Mr. Mills said that it would likely be easier to find the information on ePermitting.

Mr. Johnson agreed but said that DCR could not eliminate the requirement to post the information at the site.

Ms. Brumbaugh echoed Mr. Mills' concerns and noted that it was not a good idea to make private phone numbers accessible to the public.

Ms. Brumbaugh said that she had previously suggested a compromise. But she said that if industrial SWPPPs were not available, then others should not be either. She said that her compromise was that, if the SWPPP was requested, then within a certain number of days it would be made available.

Ms. Snead said that the locality would have a copy of everything except the SWPPP. The locality would have the stormwater management plan and the erosion and sediment control plan.

Mr. Johnson said that the local authority needed to be involved. He said that the idea of a state regulation imposing on a private sector entity a requirement with another private sector entity was a little disturbing. He said that conflict did not involve the government. He said that if there is a concern, then that concern should go to the inspecting authority who would then institute review of the SWPPP. But the idea of a conflict arising between two private entities would occur outside the purview of the inspecting authority.

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Mr. Calvert said that to see a site, he works through the municipality. He said the process could take weeks.

It was suggested that lines 1021-1027 be removed.

Section E. SWPPP Implementation

The discussion moved to lines 1028-1042.

Mr. Nunley asked about the maintenance requirement on line 1033. He said that if there was a problem that required maintenance the localities should be made aware.

Mr. Mills suggested that the term “corrective action” be used.

Mr. Fritz said that he agreed that was a better term.

Mr. Rolband noted on lines 1035-1042 the language said measures should be completed prior to the next anticipated storm event or no later than seven days following the event, but that on lines 35-38 the term immediately referenced the end of the next work day.

Ms. Snead said that lines 35-38 was specifically talking about initiation of stabilization efforts while lines 1035-1042 were talking about corrective action and maintenance.

Mr. Fritz said that the seven days was in case there was more major damage.

Mr. Mills said that a lot of the measures were installed by subcontractors. He said it may take a few days for the contractor to get the subcontractor back on site.

Section F. Inspections

The review moved to line 1043-1071.

On line 1048, Ms. Brumbaugh asked about the inspection schedule. She said that the language needed to be clarified.

On line 1146 (date and signature) Ms. Brumbaugh asked if every self inspection had to be signed by the operator.

Mr. Rolband noted that on line 1050 there had been discussion of adding language in the event that seven days ended on a holiday or weekend.

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Mr. Fritz said that lines 1050-1051 need to be updated taking into account comments from RAP members.

Mr. Toalson agreed that the language was confusing.

On line 1074, Mr. Rolband asked if the rainfall collection should be cumulative. He said the other question was who was collecting the data and where.

Mr. Fritz said that had been specified earlier.

Mr. Hammond said that for clarity it could say at the same location in which was determined a measurable rainfall event.

Mr. Johnson said that question came up why we care about cumulative rain in the last RAP session.

Mr. Fritz said that it was more important to denote days where there is a quarter inch of rain or more. He said that on days of a quarter inch rain or more the inspections would be triggered. He said cumulative did not get to that information.

Mr. Johnson agreed that DCR would look at that and likely remove the language.

Mr. Mills said that if an inspection was triggered by a storm event the amount of rainfall should be recorded. But he noted that inspection on a seven day schedule might record no rainfall in that period of time. He said on a normal 7-14 day inspection, rainfalls did not need to be addressed.

On line 1055 (temporary stabilization due to winter conditions), Mr. Mills talked about the snow and ice schedule. He asked if that would address the modified inspection schedule. He said the modified inspection schedule did not address frozen ground.

Ms. Snead said that staff would have to consider that.

In regards to temporary stabilization due to winter conditions, Ms. Sanner said that the federal permit does not allow the 30 days for the inspection frequency.

Mr. Mills noted that on lines 1081-1082 there appeared to be verbiage missing.

On line 1088, Mr. Mills asked what the reference was for cut and fill slopes. He said there needed to be a reason for those reviewing.

Mr. Mills said on 1089 he was not aware of anything referred to elsewhere in Erosion and Sediment control as a sediment barrier.

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Staff agreed to review that language.

Mr. Mills said on 1092 the word “convey” would be better than “contain.”

Mr. Mills said on 1103 the Section sequence needed to be review.

Mr. Mills said that on lines 1110 and 1111 he was not sure if there was a difference between stormwater inlets and catch basins.

On line 1162 (removal of accumulated sediment deposits), Ms. Brumbaugh said that she liked the change but was concerned if an operator was having to remove sediment on another property.

Mr. Mills offered several other grammatical corrections.

Mr. Nunley said that as a general comment on the criteria, that he would recommend that other programs be looked at for consistency.

G. Corrective actions

Ms. Snead continued with lines 1155 through 1166.

Mr. Paine asked for an example of “additional control measures implemented to minimize pollutants.”

Mr. Fritz said that the corrective action would require plan modification.

Mr. Nunley noted that Section G said that the inspection should occur within seven days. He noted that in previous sections there were not similar provisions. He referenced the language on line 581. He said that in these events the problem needed to be addressed.

Mr. Toalson said that in some situations more damage is done while trying to repair a problem.

Ms. Snead said that was in reference to wetlands.

Mr. Hammond said that perhaps that paragraph could be separated into two different cases. He said that under a normal situation this would apply but if there was coverage for discharge to impaired waters, the repair would be done in a quicker fashion.

Mr. Fritz said that staff would review both sections in question.

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Mr. Toalson asked a question about line 1149 and the need to retain inspection records for three years. He said once the permit is closed it is terminated.

Mr. Fritz said that was a requirement in the federal code.

Ms. Snead called on a test for consensus on Section II. There was no consensus. Ms. Sanner and Mr. Calvert noted that they were not satisfied with the requirements, specifically the removal of the SWPPP availability provision.

Section III: Conditions applicable to All State Permits

There was general support for this section.

In closing, Ms. Snead said that it was apparent another meeting was not needed. Consensus was achieved for all sections with the exception of Common Plan of Development or Sale, the 4 day requirement, and SWPPP Availability. Language regarding the 4-day requirement would be drafted in response to the comments of the RAP. Ms. Snead said that the Virginia Soil and Water Conservation Board would receive the information about two weeks before their February 26 Board meeting. At that meeting, DCR will present the areas where there was consensus and will present the areas where there was not consensus to the Board. The differing positions will be presented to the Board.

Ms. Sanner asked if it would be possible to treat the SWPPP availability in the same manner as the discussion regarding the 4 days requirement.

Ms. Snead said yes, that areas where there is no consensus will be discussed with the Board. She noted that the date of the Board meeting was February 26. She said that materials sent to the Board would be provided to RAP members at the same time as they are sent to the Board.

Ms. Snead thanked the RAP for their participation.
The meeting was adjourned.